Writing about Alexander after his death in 2003, a journalist in Minneapolis observed that although "the government crushed the man, his cause triumphed," because the "materials that constituted the basis for Alexander's obscenity conviction . . . are now common fare." As the lawyer who represented Alexander observed, "Today, you can go almost anywhere in this country and see this sort of stuff." Indeed, he noted, the materials distributed by Sturman and Alexander now seem "quaint."12

SHIFTING REALITIES

THE ADVENT OF the Internet had a profound impact on the availability of sexually explicit expression, on the evolution of community standards, and on the priorities of law enforcement. Suddenly, and for the first time in human history, it was possible for individuals to access such material instantly in the privacy of their homes without ever venturing out into an adult theater, a video store, or a bookstore, and (in most instances) without spending a dime. Suddenly, millions of ever more sexually explicit websites could be accessed with the mere click of a mouse.

Moreover, many of these websites exist outside the boundaries of the United States and thus, as a practical matter, outside the reach of American law enforcement. Even if the government could shut down a website based in California or Florida, a person searching for "extreme sex" could instantly find thousands of erotic websites based in Sweden, Denmark, Brazil, Vietnam, or Japan. With such material so readily available on the Internet, what was the point of devoting limited prosecutorial resources to prosecuting adult bookstores or theaters, which were tame by comparison?

And, of course, as more and more people were exposed to ever more explicit sexual material on the Internet, the meaning of "patently offensive to contemporary community standards" shifted as well. Even more confusing, when dealing with the Internet, it is unclear precisely what "community standards" should govern in deciding whether any particular work which lS accessible simultaneously everywhere is obscene. Should it be the "community standards" of the community where the trial takes place? Of the community where the material was put on the Internet? Of the national community? Of the community of Internet users? Prosecutors grappling with these questions faced a steep uphill battle.

Thus, by the time Bill Clinton assumed the presidency in 1993, the practical realities of combatting obscenity had changed radically. In short, the strategy of criminal prosecution seemed increasingly like a dead end. More

over, unlike Ronald Reagan, Bill Clinton was hardly a champion of the Christian Right. But because of his own alleged sexual adventures, Clin ton was vulnerable politically on the issue of sexual morality. Thus, when the subject of obscenity arose during the 1992 campaign, he promised that "aggressive enforcement" of the federal obscenity laws would be "a priority of the Clinton/Gore administration." After he assumed office, however, the Department of Justice, under the direction of Attorney General Janet Reno, reassessed the Department's priorities and decided to shift its energies away from the seemingly futile prosecution of adult obscenity and to focus instead on enforcing the laws against child pornography.[13]

The critical feature of child pornography is that it depicts *real* children engaged in *actual* sexual conduct. The problem of child pornography entered the public consciousness in the late 1970s when the market for such material first grew to a noticeable size. Before then, it was difficult for pedophiles who were interested in such material to find one another and it was difficult for anyone to distribute child pornography anonymously on a large scale. The market for child pornography exploded beginning in the late 1970s, however, with the advent of digital technology and then the Internet. The Internet, in particular, enables individuals to create, access, and share such material worldwide at the click of a button and it facilitates the creation of online communities of individuals who seek access to child pornography.14

There were no laws in the United States directed specifically at child pornography until 1977, when a flurry of states first enacted legislation making it a crime not only to cause minors to engage in sexual conduct (which was traditionally prohibited as child sexual abuse), but also to produce, sell, exhibit, distribute, or possess any sexually explicit material that shows a real child engaged in actual sexual conduct (typically defined as including "sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sadomasochistic abuse, or lewd exhibition of the genitals"). By 1993, the federal government and almost every state had such a law.15

In the past, such material would simply have been deemed obscene, but with the sharp narrowing of the definition of obscenity, legislators came to the conclusion that laws directed specifically at child pornography were necessary in order to protect children whether or not the material was legally obscene. Even though the act of causing a child to engage in actual sexual conduct for the purpose of creating sexually explicit images or movies could independently be prosecuted as child sexual abuse, these laws were deemed necessary both to reduce the financial incentive individuals might have to produce and distribute such materials and to protect individuals

from the psychological harm of knowing that such images of them were continuing to circulate in society.

The federal government first enacted child pornography legislation in the Protection of Children Against Sexual Exploitation Act of 1977.[16] The Meese Commission declared in 1986 that the production and sharing of such material caused serious harm to children and urged the federal government to strictly enforce the prohibition on child pornography. In response to that recommendation, Congress enacted new legislation that increased the penalties for producing, distributing, and possessing such material.[17]

It was these developments that led the Clinton administration to refocus its energies away from prosecutions of traditional adult obscenity and toward child pornography. Thus, from 1993 through 2000, the Clinton administration initiated an average of only twenty criminal prosecutions per year against the sale or distribution of adult obscenity. This represented a significant decrease from the preceding six years. The decision to reduce the number of adult obscenity prosecutions was sharply criticized by some religious groups. Concerned Women for America, for example, an organization dedicated to bringing "Biblical principles into all levels of public policy," condemned Clinton for loosing "a dangerous predator on our com munities," and the Baptist Press charged that the government's shift in priorities reflected Clinton's own "moral fabric."[18]

On the other hand, the number of federal prosecutions for child pornography increased every year during the Clinton administration, rising steadily from 79 in 1993 to 563 in 2000. Over the course of eight years, the Clinton administration initiated a total of2,326 child pornography prosecutions, resulting in 1,765 convictions. The shift in emphasis was dramatic.[19]

"TO ADVANCE THE CAUSE OF JUSTICE"

WHEN GEORGE W. BUSH assumed the presidency in 2001 after a bitterly disputed election, many people expected a resurgence of old fashioned adult obscenity prosecutions. Bush stood, after all, for a return to traditional American values. Living up to that promise, Attorney Generaljohn Ashcroft who had been raised in a deeply religious evangelical family and who as an elected official had earned perfect marks from the Christian Coalition proudly declared in 2002 that "the Department of Justice 18 committed unequivocally to the task of prosecuting obscenity." Obscenity was once again proclaimed to be a "priority," and Ashcroft promised Congress a new crackdown on sexually explicit material generally.[20]

Thus, by the end of 2003, a born again president and his even more devout attorney general could boast that they had initiated "the largest expansion of federal obscenity prosecutions in years," and they declared nationwide "crusade against online pornography." This was somewhat mis leading, however, because their focus was not on what earlier generations had deemed "obscene," but on new and more extreme forms of obscenity that emphasized brutality, bestiality, and defecation. The plain and simple fact was that in light of the extraordinary proliferation of sexually explicit material on the Internet, those who now prosecuted obscenity had to focus on material that was deemed so extreme that it could be legally prohibited, even in the twenty first century. And that was what the Bush administration went after.21

In April 2003, for example, the FBI raided the offices of Extreme Associates in western Pennsylvania. According to Mary Beth Buchanan, the United States attorney who oversaw the prosecution, Extreme Associates' videos were among "the most vile, offensive and degrading material" on the Internet. As an illustration, she cited Forced Entry, a sexually explicit video that "depicts several rape scenes, where women are beaten, slapped, spit upon and degraded in every way possible" and then "ultimately killed." This prosecution was the first major test of the Bush administration's campaign against obscenity, and it turned out to be representative of the prosecutions to come. *22

But despite the early assurances of Attorney General Ashcroft that the Bush administration would reenergize the government's attack on adult obscenity, the Department of Justice under Ashcroft's direction actually filed fewer than ten adult obscenity prosecutions between 2001 and 2005 even less than the Clinton administration all of which were directed at the most extreme forms of pornography. The Bush administration's tepid approach to adult obscenity infuriated the religious right. Patrick Trueman, the former head of CEOS who by this time was senior legal counsel for the Family Research Council, an organization dedicated to defending "faith, family and freedom from a Christian world view" condemned the Bush administration in 2005 for focusing on only "the hardest material," such as "bestiality, or rape films." In response to the explanation that the government needed to focus its resources primarily on child pornography, Trueman complained that this was nothing more than "an excuse for doing nothing on obscenity."23

* After six years of litigation, the defendants in the Extreme Associates case finally pleaded guilty in 2009. The defendants were sentenced to one year and one day in prison.